BIHAR LEGAL SUPPORT SOCIETY, A

v.

THE CHIEF JUSTICE OF INDIA & ANR.

NOVEMBER 19, 1986

[P.N. BHAGWATI, C.J., RANGANATH MISRA, V. KHALID, G.L. OZA AND M.M. DUTT, JJ.] B

Constitution of India, Article 136—Special leave petitions against refusal of bail/anticipatory bail—Immediate listing of—Within administrative jurisdiction of Chief Justice—Opportunity of mentioning to be availed of.

C

Criminal Procedure Code, 1973, s. 439—Bail/anticipatory bail—Refusal of—Special leave petition to Supreme Court—Urgent listing—Right to.

Judicial Reform—National Court of Appeal—Setting up—Necessity of. D

The writ petition, a sequel to the expeditious consideration of the bail application of two industrialists by this Court at a late night sitting on 5th September, 1986, solicited the same anxiety to permeate the attitude and inclination of the Court in all matters where questions relating to the liberty of citizens arose, and required that the special leave petitions of small men E **against orders refusing bail must receive the same importance and should be taken up for consideration immediately.**

Disposing of the writ petition, the Court,

HELD: The Supreme Court should not ordinarily, save in exceptional F **cases, interfere with orders granting or refusing bail or anticipatory bail, because these are matters in which the High Court should normally be final arbiter. It should interfere only in the limited class of cases where there is a substantial question of law involved which needs to be finally laid at rest by it, or where there is grave, blatant and atrocious miscarriage of justice. [299 E, A]**

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It is not correct to say that this Court is not giving to the small men the same treatment as it is giving to the big industrialists. Their special leave petitions are as much entitled to consideration as that of the industrialists. The Court has always regarded the poor and the disadvantaged as entitled to preferential consideration than the rich and the affluent, the businessmen and the like. [298 A, 297 D] H

A **The Court has evolved, as a matter of self discipline, certain norms to guide it in the exercise of its discretion in cases where special leave petitions are filed against orders granting or refusing bail or anticipatory bail. The question whether such petitions should be listed immediately or not is a question within the administrative jurisdiction of the Chief Justice and every such petitioner has an opportunity of mentioning the case before him in that capacity for** B **urgent listing and where a case deserves urgent listing he makes an appropriate order. [299 C, 298 BC]**

The Supreme Court was never intended to be a regular court of appeal against orders made by the High Court or the Sessions Court or the Magistrates. It was created as an apex court for the purpose of laying down C **the law for the entire country and extraordinary jurisdiction for granting special leave was conferred upon it under Article 136 of the Constitution so that it could interfere whenever it found that the law was not correctly enunciated by lower courts or tribunals and it was necessary to pronounce the correct law on the subject. This extraordinary jurisdiction could also be availed by the apex court for the purpose of correcting grave miscarriage of** D **justice, but such cases would be exceptional by their very nature. It is not every case where the apex court finds that some injustice has been done that it would grant special leave and interfere. That would be converting the apex court into a regular court of appeal and moreover by so doing it would soon be reduced to a position where it will find itself unable to remedy any injustice at all on account of the tremendous backlog of cases which is bound to** E **accumulate. [298 D-F]**

It would be desirable to set up a National Court of Appeal which would be in a position to entertain appeals by special leave from the decisions of the High Courts and the Tribunals in the country in civil, criminal, revenue and labour cases and so far as the present apex court is concerned, it should F **concern itself only with entertaining cases involving questions of constitutional law and public law. [298 H]**

ORIGINAL JURISDICTION; Writ Petition (Crl.) No. 540 of 1986

(Under Article 32 of the Constitution of India)

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Jaya Narain Petitioner-in-person.

The Judgement of the Court was delivered by

H **BHAGWATI, CJ:** This writ petition has been filed by the Bihar Legal

Support Society which is a registered Society having as its main aim and objective provision of legal support to the poor and disadvantaged sections of the community with a view to assisting them to fight for their constitutional and legal rights through the process of law. The occasion for filing the writ petition is set out in paragraph 2 where it has been stated that a Bench of this Court sat late at night on 5th September 1986 for considering the bail application of Shri Lalit Mohan Thapar and Shri Shyam Sunder Lal and that the same anxiety which was shown by this Court in taking up the bail application of these two gentlemen must "permeate the attitude and inclination of this Hon'ble Court in all matters where questions relating to the liberty of citizens, high or low, arise" and that the bail applications of "small men" must receive the same importance as the bail applications of "big industrialists." The petitioner, therefore, prays that special leave petitions against orders refusing bail or anticipatory bail should be taken up by this Court immediately in the same manner in which the special leave petition of these two "big industrialists" was taken up by the Court.

Now, we may point out that so far as this Court is concerned, the special leave petitions of "small men" are as much entitled to consideration as special leave petitions of "big industrialists". In fact, this Court has always regarded the poor and the disadvantaged as entitled to preferential consideration than the rich and the affluent, the businessmen and the industrialists. The reason is that the weaker sections of Indian humanity have been deprived of justice for long, long years: they have had no access to justice on account of their poverty, ignorance and illiteracy. They are not aware of the rights and benefits conferred upon them by the Constitution and the law. On account of their socially and economically disadvantaged position they lack the capacity to assert their rights and they do not have the material resources with which to enforce their social and economic entitlements and combat exploitation and injustice. The majority of the people of our country are subjected to this denial of access to justice and, overtaken by despair and helplessness, they continue to remain victims of an exploitative society where economic power is concentrated in the hands of a few and it is used for perpetuation of domination over large masses of human beings. This court has always, therefore, regarded it as its duty to come to the rescue of these deprived and vulnerable sections of Indian humanity in order to help them realise their economic and social entitlements and to bring to an end their oppression and exploitation. The strategy of public interest litigation has been evolved by this Court with a view to bringing justice within the easy reach of the poor and the disadvantaged sections of the community. This Court has always shown the greatest concern and anxiety for the welfare of the large masses of people in the country who are living a life of want and destitution, misery and suffering and has become a symbol of the hopes and aspirations of millions of people in the

A country. It is, therefore, not correct to say that this Court is not giving to the "small men" the same treatment as it is givng to the "big industrialists". In fact, the concern shown to the poor and the disadvantaged is much greater than that shown to the rich and the well-to-do because the latter can on account of their dominant social and economic position and large material resources, resist aggression on their rights where the poor and the deprived just do not B have the capacity or the will to resist and fight.

The question whether special leave petitions against refusal of bail or anticipatory bail should be listed immediately or not is a question within the administrative jurisdiction of the Chief Justice and we cannot give any direction in that behalf. But, we may point out that every petitioner who files a C special leave petition against refusal of bail or anticipatory bail has an opportunity of mentioning his case before the learned Chief Justice in his administrative capacity for urgent listing and wherever a case deserves urgent listing, the Chief Justice makes an appropriate order for urgent listing. It may, however, be pointed out that this Court was never intended to be a regular court of appeal against orders made by the High Court or the sessions court or the D Magistrates. It was created as an apex court for the purpose of laying down the law for the entire country and extraordinary jurisdiction for granting special leave was conferred upon it under Article 136 of the Constitution so that it could interfere whenever it found that law was not correctly enunciated by the lower courts or tribunals and it was necessary to pronounce the correct law on the subject. This extraordinary jurisdiction could also be availed by the E apex court for the purpose of correcting grave miscarriage of justice, but such cases would be exceptional by their very nature. It is not every case where the apex court finds that some injustice has been done that it would grant special leave and interfere. That would be converting the apex court into a regular court of appeal and moreover, by so doing, the apex court would soon be reduced to a position where it will find itself unable to remedy any injustice at F all, on account of the tremendous backlog of cases which is bound to accumulate. We must realise that in the vast majority of cases the High Courts must become final even if they are wrong. The apex court can also be wrong on occasions but since there is no further appeal, what the apex court says is final. That is why one American Judge said of the Supreme Court of the United States: "We are right because we are final: we are not final because we are G right". We must, therefore, reconcile ourselves to the idea that like the apex court which may be wrong on occasions, the High Courts may also be wrong and it is not every error of the High Court which the apex court can possibly correct. We think it would be desirable to set up a National Court of Appeal which would be in a position to entertain appeals by special leave from the decisions of the High Courts and the Tribunals in the country in civil, criminal, H revenue and labour cases and so far as the present apex court is concerned, it

should concern itself only with entertaining cases, involving questions of constitutional law and public law. But until any such policy decision is endorsed by the Government, the apex court must interfere only in the limited class of cases where there is a substantial question of law involved which needs to be finally laid at rest by the apex court for the entire country or where there is grave, blatent and atrocious miscarriage of justice. Sometimes, we Judges feel that when a case comes before us and we find that injustice has been done, how can we shut our eyes to it. But the answer to this anguished query is that the Judges of the apex court may not shut their eyes to injustice but they must equally not keep their eyes too wide open, otherwise the apex court would not be able to perform the high and noble role which it was intended to perform according to the faith of the Constitution makers. It is for this reason that the apex court has evolved, as a matter of self-discipline, certain norms to guide it in the exercise of its discretion in cases where special leave petitions are filed against orders granting or refusing bail or anticipatory bail. These norms have to be articulated in order that the people may know as to what is the judicial policy of the apex court in entertaining such special leave petitions. That would go a long way towards introducing a measure of certainty in judicial response to such special leave petitions and would also tend to reduce the in-flow of such special leave petitions. This was the reason why a Bench of this Court consisting of two of us, viz., the Chief Justice and Justice Ranganath Misra, clearly enunciated in an Order made on 30th October 1985 in special leave petition (criminal) No. 2938 of 1985 that this Court should not "interfere with the orders granting or refusing bail or anticipatory bail" and that "these are matters in which the High Court should normally become the final authority. We reiterate this policy principle laid down by the Bench of this Court and hold that this Court should not ordinarily, save in exceptional cases, interfere with orders granting or refusing bail or anticipatory bail, because these are matters in which the High Court should normally be the final arbiter.

The writ petition will stand disposed of in these terms. We appreciate the anxiety and concern shown by the petitioner for the poor and the disadvantaged in bringing this public interest litigation.

P.S.S. Petition disposed of.